

# **EXHIBIT AN**

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CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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SENTIUS INTERNATIONAL, LLC, )  
Plaintiff, )  
vs. ) Case No.  
MICROSOFT CORPORATION, ) 5:13-CV-825-PSG  
Defendant. )  
-----)

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF ROBERT MILLS  
LOS ANGELES, CALIFORNIA  
TUESDAY, NOVEMBER 18, 2014

Reported by:  
NANCY J. MARTIN, CSR No. 9504, RMR  
JOB No. 1961772  
PAGES 1 - 244

## CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 150</p> <p>1 Q. You have? When have you done that? 15:10:15</p> <p>2 A. Paragraph 161 of my report. I cite to sworn 15:10:36</p> <p>3 testimony from a Microsoft witness in the Lucent trial</p> <p>4 that testified that about half of Office users have</p> <p>5 historically used Outlook. In particular -- let's</p> <p>6 see. He testified that "the big dogs" of Office were</p> <p>7 always Word, Excel, PowerPoint, in that order.</p> <p>8 Outlook is sort of a distant fourth.</p> <p>9 Q. That actually reminds me of something I meant 15:11:23</p> <p>10 to ask you earlier. In this Paragraph 161 --</p> <p>11 withdrawn.</p> <p>12 Okay. So you have -- in forming your</p> <p>13 opinions in this matter, have you taken into account</p> <p>14 any quantitative data with regard to the frequency at</p> <p>15 which the accused applications are used, namely</p> <p>16 Outlook, PowerPoint, Word, Publisher, and OneNote?</p> <p>17 A. Well, I had some of that information in mind 15:12:25</p> <p>18 as I was formulating my opinion, certainly, and I</p> <p>19 recognize that Outlook is not the most used of the</p> <p>20 products in the Office suite. In fact, it's,</p> <p>21 according to Microsoft, a distant fourth. And, yet,</p> <p>22 I've included all of the copies of Outlook in my</p> <p>23 effective royalty rate calculation. I haven't limited</p> <p>24 it to just those copies that have been used by</p> <p>25 someone.</p>	<p style="text-align: right;">Page 152</p> <p>1 can -- in fact, I suspect Microsoft can't tell whether</p> <p>2 a specific application has been used by a specific</p> <p>3 user, and the reason I think that's true is because</p> <p>4 Microsoft conducts its own surveys to learn about</p> <p>5 that. So I don't know that the parties could actually</p> <p>6 track a royalty structure that way.</p> <p>7 And then, of course, you have the issue with</p> <p>8 people may start using an application -- may not use</p> <p>9 it when they first purchase Office, but may start</p> <p>10 using it at some point down in the future, and, you</p> <p>11 know, how would you handle that in a royalty-based</p> <p>12 calculation. It becomes unmanageable, essentially.</p> <p>13 So I think that the most likely outcome would be that</p> <p>14 the parties would agree to a royalty rate that would</p> <p>15 be applied to the programs, and with the understanding</p> <p>16 that not all those programs will be used by every</p> <p>17 user.</p> <p>18 Q. And yet, in your view, each of those programs 15:15:47</p> <p>19 should have the same royalty rate?</p> <p>20 A. Yes. I think if you were to try to restrict 15:15:52</p> <p>21 it down to just use, the rate would have to be much</p> <p>22 higher because I couldn't use, in the effective</p> <p>23 royalty rate calculation, all copies of Outlook. I</p> <p>24 would use approximately 50 percent of those copies if</p> <p>25 I were looking at just the number of people that use</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. With regard to the publisher application, 15:13:14</p> <p>2 have you taken account of the frequency of which</p> <p>3 Publisher is used in forming your opinions?</p> <p>4 A. Well, it's my understanding that it's used 15:13:27</p> <p>5 less frequently than the other four applications that</p> <p>6 I've mentioned.</p> <p>7 Q. Is it used more or less frequently than 15:13:33</p> <p>8 OneNote?</p> <p>9 A. I think I have seen data that speaks to that, 15:13:47</p> <p>10 but I don't recall which of those two applications</p> <p>11 garners more use.</p> <p>12 Q. Did that matter to you in forming your 15:13:56</p> <p>13 opinions?</p> <p>14 A. No, because I haven't identified a different 15:14:00</p> <p>15 royalty rate for each of the products that form the</p> <p>16 suite. I had in mind that, as the baseline, I was</p> <p>17 using a product that was a distance fourth in terms of</p> <p>18 popularity, and that was something that I certainly</p> <p>19 considered.</p> <p>20 Q. So regardless of whether a given application 15:14:29</p> <p>21 was, in fact, used, you included it within your</p> <p>22 overall royalty calculation?</p> <p>23 A. Yes, because I think the parties to a 15:14:43</p> <p>24 hypothetical negotiation would structure an agreement</p> <p>25 that way. First of all, I don't know that Microsoft</p>	<p style="text-align: right;">Page 153</p> <p>1 Outlook. So that in and of itself would double the</p> <p>2 rate.</p> <p>3 Q. Sorry. Can you explain that? 15:16:16</p> <p>4 A. Yes. So Microsoft testified at trial, a 15:16:17</p> <p>5 Microsoft witness, that historically only half of</p> <p>6 Office users use Outlook, and if we were going down</p> <p>7 the line of trying to adjust rates based on usage,</p> <p>8 then I would also have to consider that fact in my</p> <p>9 effective royalty rate calculation.</p> <p>10 Q. How would you do so? 15:16:37</p> <p>11 A. I would look at the estimated -- I suppose 15:16:39</p> <p>12 the estimated number of people that have actually used</p> <p>13 it. I don't think that's the most likely way that the</p> <p>14 parties would structure an agreement. So I haven't</p> <p>15 done that. But that's, I think, the kind of analysis</p> <p>16 that you would have to consider.</p> <p>17 Q. Were the claims that were at issue in the 15:18:03</p> <p>18 Lucent case in the Day patent, were they apparatus</p> <p>19 claims or were they method claims?</p> <p>20 A. I would have to look back to be certain. My 15:18:29</p> <p>21 recollection is that there were method claims</p> <p>22 involved, but I would have to look back to be certain.</p> <p>23 I can't attest to that.</p> <p>24 Q. All right. Let me ask you about the terms of 15:20:04</p> <p>25 the Lucent agreement. The monetary term of the Lucent</p>

## CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 154</p> <p>1 agreement was a lump sum payment; right?</p> <p>2 A. Yes. 15:20:16</p> <p>3 Q. And what you have done, for purposes of your 15:20:17</p> <p>4 analysis in this case, is you have taken that lump sum</p> <p>5 payment and divided it by what you assume to be the</p> <p>6 count for the products that were at issue in that case</p> <p>7 to derive an effective per-unit royalty rate; right?</p> <p>8 A. No, that's not quite correct. 15:20:39</p> <p>9 Q. What did I get wrong? 15:20:41</p> <p>10 A. So the Lucent agreement was a lump-sum 15:20:44</p> <p>11 agreement in which Microsoft agreed to pay</p> <p>12 [REDACTED]. And I have not used the entirety of that</p> <p>13 payment in my effective royalty rate calculation.</p> <p>14 I've limited that calculation to the amount that was</p> <p>15 actually awarded by the Court in the Lucent litigation</p> <p>16 for the date picker functionality in Outlook. If I</p> <p>17 had used the entire [REDACTED] as the basis for</p> <p>18 calculating an effective royalty rate, the rate would</p> <p>19 be considerably higher.</p> <p>20 Q. So thank you for that correction. So you 15:21:37</p> <p>21 took the figure that the judge in that case had chosen</p> <p>22 for the damages amount and you divided -- for Outlook</p> <p>23 and you divided it by the number of units for Outlook;</p> <p>24 right?</p> <p>25 A. Yes, that's, in effect, the calculation. 15:22:16</p>	<p style="text-align: right;">Page 156</p> <p>1 in which the Court modified that award, that indicates</p> <p>2 that the amount was a function of the extent to which</p> <p>3 Microsoft sold Outlook. In that kind of a situation</p> <p>4 it's, in my view, appropriate to look at the amount as</p> <p>5 an effective amount per unit so we can draw</p> <p>6 comparisons between two settlement agreements that</p> <p>7 cover different quantities of use.</p> <p>8 Q. Well, let's turn to the background of the 15:24:54</p> <p>9 Lucent decision. The Court in that matter was</p> <p>10 performing a calculation to arrive at a lump-sum</p> <p>11 valuation; right?</p> <p>12 A. I think we need -- given the procedural 15:25:23</p> <p>13 history of the case, I want to make sure that we're</p> <p>14 talking about the same -- I think we're talking about</p> <p>15 the same order, the same situation. That case was on</p> <p>16 appeal and remanded, and I suspect you're talking</p> <p>17 about the order on the JMOL.</p> <p>18 MR. GLITZENSTEIN: I am.</p> <p>19 Let me ask the court reporter to mark as</p> <p>20 Mills Exhibit 7 from the Lucent v. Microsoft case, the</p> <p>21 order granting in part and denying in part Microsoft's</p> <p>22 motion for judgment as a matter of trial and the</p> <p>23 alternative, a new trial with a remittitur.</p> <p>24 (Deposition Exhibit 7 was marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. Now, is it always appropriate, in your view, 15:22:21</p> <p>2 where there is a lump-sum agreement of any sort,</p> <p>3 whether it's in settlement of litigation or otherwise,</p> <p>4 to take that figure and divide it by the number of</p> <p>5 units that might be encompassed by that agreement to</p> <p>6 come up with an effective royalty rate?</p> <p>7 A. Is the question is that always appropriate? 15:22:54</p> <p>8 Q. Yes. 15:22:56</p> <p>9 A. I can't say that it would always be 15:23:05</p> <p>10 appropriate. I mean I would have to think of every</p> <p>11 conceivable possibility before I could offer that</p> <p>12 opinion. But I think in this case, it certainly is.</p> <p>13 Q. Well, I want to understand your methodology 15:23:15</p> <p>14 first. In what situations is it appropriate to take a</p> <p>15 lump-sum payment amount in a license agreement and</p> <p>16 divide it by the number of units that would be</p> <p>17 encompassed by that agreement to arrive at a per-unit</p> <p>18 effective royalty rate?</p> <p>19 A. Well, that's something that I commonly do in 15:23:41</p> <p>20 practice, and other damages experts do as well, but</p> <p>21 it's not always possible because we don't always have</p> <p>22 information about the number of units sold, for</p> <p>23 example. But in a situation like this, where we do</p> <p>24 have that kind of information and we have information</p> <p>25 about the trial testimony, the jury award, and the way</p>	<p style="text-align: right;">Page 157</p> <p>1 BY MR. GLITZENSTEIN:</p> <p>2 Q. This is the order that you were just 15:26:24</p> <p>3 referring to?</p> <p>4 A. Yes. 15:26:32</p> <p>5 Q. And turn to Page 5, please, in that order. 15:26:33</p> <p>6 And do you see in the last full paragraph at the</p> <p>7 bottom of Page 5 the Court notes that Lucent was</p> <p>8 seeking a reasonable royalty based on the outcome of a</p> <p>9 hypothetical negotiation for a lump sum; right?</p> <p>10 A. I don't know that she's saying that in this 15:27:25</p> <p>11 paragraph. She's describing what a lump sum royalty</p> <p>12 agreement is. But I don't see her, in that paragraph</p> <p>13 at least, saying that Lucent was seeking a lump sum</p> <p>14 royalty.</p> <p>15 Q. I'm looking at Lines 21 and 22 on Page 5 15:27:38</p> <p>16 where she says, "Lucent emphasizes that this is a</p> <p>17 reasonable royalty case based on the outcome of a</p> <p>18 hypothetical negotiation for a lump sum; right?</p> <p>19 A. I see. That's not the paragraph that I was 15:27:50</p> <p>20 referring to. Yes, I see that.</p> <p>21 Q. All right. So Lucent, in this case, wasn't 15:27:55</p> <p>22 seeking a royalty that would be determined on the --</p> <p>23 on a per-unit basis; right?</p> <p>24 A. It was seeking a royalty that depended on the 15:28:09</p> <p>25 number of units sold.</p>

## CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

<p style="text-align: right;">Page 222</p> <p>1 Q. Have you, in any of your other matters, 18:03:23</p> <p>2 confronted the situation of a reasonable royalty on a</p> <p>3 subscription based product or service?</p> <p>4 A. I can think of examples where software 18:04:22</p> <p>5 maintenance is part of the case, and that's sold on a</p> <p>6 subscription basis.</p> <p>7 Q. And that was -- was there a royalty collected 18:04:32</p> <p>8 on the maintenance component?</p> <p>9 A. I don't have a specific recollection of how 18:04:44</p> <p>10 those agreements worked.</p> <p>11 Q. Other than that, can you recall any other 18:04:49</p> <p>12 instance?</p> <p>13 A. Let me think for just a moment. Again, I 18:04:58</p> <p>14 reviewed a lot of license agreements.</p> <p>15 (Pause in proceedings.)</p> <p>16 THE WITNESS: Nothing is immediately coming</p> <p>17 to mind, but I haven't committed to memory all of the</p> <p>18 agreements that I've reviewed, and I haven't thought</p> <p>19 about that issue in detail.</p> <p>20 BY MR. GLITZENSTEIN:</p> <p>21 Q. In reaching your opinions in this matter, did 18:06:35</p> <p>22 you apply the entire market value rule, and if so,</p> <p>23 how?</p> <p>24 A. No, I did not. 18:06:44</p> <p>25 Q. Why not? 18:06:46</p>	<p style="text-align: right;">Page 224</p> <p>1 Microsoft as a product. So it's not so much the</p> <p>2 dollar amount, but it's the proportion of Microsoft</p> <p>3 sales that are attributable to Office. That's a</p> <p>4 relevant factor.</p> <p>5 Q. What's that relevant to? 18:09:51</p> <p>6 A. It shows that these -- the products at issue 18:09:52</p> <p>7 here are of paramount importance to Microsoft. These</p> <p>8 products account for a significant amount of its</p> <p>9 revenue and, roughly, half of its operating profit as</p> <p>10 a company.</p> <p>11 Q. Again, what is that relevant to as part of 18:10:09</p> <p>12 the opinions that you offer in this matter on what the</p> <p>13 appropriate measure of damages is?</p> <p>14 A. Well, it demonstrates that the products here 18:10:20</p> <p>15 are extremely important to Microsoft. And so that's</p> <p>16 something that I think is relevant under my analysis</p> <p>17 of Georgia-Pacific. If the products were</p> <p>18 insubstantial and immaterial to Microsoft, then the</p> <p>19 outcome may be different.</p> <p>20 Q. Which Georgia-Pacific factor is this relevant 18:10:42</p> <p>21 to?</p> <p>22 (The witness reviewed the document.)</p> <p>23 THE WITNESS: It's relevant to</p> <p>24 Georgia-Pacific No. 8, which is the established</p> <p>25 profitability of the product made under the patent.</p>
<p style="text-align: right;">Page 223</p> <p>1 A. Because I didn't have -- I mean it didn't 18:06:52</p> <p>2 even occur to me to apply the entire market value rule</p> <p>3 in this case because the products here are</p> <p>4 multi-feature products that -- and I can't -- I don't</p> <p>5 have any evidence that all of the sales of these</p> <p>6 products are driven by the patented functionality.</p> <p>7 Q. If you could turn in your report to 18:07:24</p> <p>8 Paragraph 106, please.</p> <p>9 A. Yes. 18:07:39</p> <p>10 Q. You state there that "Microsoft has generated 18:07:39</p> <p>11 more than [REDACTED] in revenue from" Microsoft</p> <p>12 Office. How was that relevant to your analysis and</p> <p>13 opinions in this matter?</p> <p>14 (The witness further reviewed Exhibit 1.)</p> <p>15 THE WITNESS: Let me just -- let me just say</p> <p>16 that the revenue from sales of Office is relevant</p> <p>17 under the income approach because it's the first step</p> <p>18 in understanding at-risk profit. Understanding the</p> <p>19 revenue that's been generated, and how much of that</p> <p>20 revenue is at risk without the patented functionality</p> <p>21 is one of the steps in that process.</p> <p>22 BY MR. GLITZENSTEIN:</p> <p>23 Q. Is it relevant in any other way? 18:09:03</p> <p>24 A. I think it's relevant in the sense that it 18:09:27</p> <p>25 demonstrates the relative importance of Office to</p>	<p style="text-align: right;">Page 225</p> <p>1 So at Paragraph 108 is where I discuss this.</p> <p>2 BY MR. GLITZENSTEIN:</p> <p>3 Q. In your view, is it relevant to anything 18:11:14</p> <p>4 else?</p> <p>5 A. Not that comes to mind. 18:11:52</p> <p>6 Q. You mentioned Paragraph 107. So how is 18:11:54</p> <p>7 Microsoft's total profit relevant to profitability?</p> <p>8 A. I'm not sure I understand the question. In 18:12:15</p> <p>9 fact, I don't understand the question.</p> <p>10 Q. Do you understand that there's a distinction 18:12:19</p> <p>11 between profitability and profit?</p> <p>12 A. I think it depends on the context, but there 18:12:31</p> <p>13 could be a distinction there.</p> <p>14 Q. What's the distinction? 18:12:35</p> <p>15 A. I can imagine a situation where profitability 18:12:36</p> <p>16 refers more to a margin.</p> <p>17 Q. And for purposes of Georgia-Pacific Factor 8, 18:12:48</p> <p>18 is profit or profit margin the relevant metric?</p> <p>19 A. I think it depends on the case. They both 18:12:56</p> <p>20 could be relevant.</p> <p>21 Q. How was Microsoft's total profit relevant to 18:13:00</p> <p>22 any issue in this lawsuit?</p> <p>23 A. You mean Microsoft's total profit as a 18:13:10</p> <p>24 company?</p> <p>25 Q. Well, the profit numbers that you cite in 18:13:12</p>

57 (Pages 222 to 225)